

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CE DESIGN LTD., etc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 07 C 5344
	)	
JOHN H. TOMASSONE, etc.,	)	
	)	
Defendant.	)	

MEMORANDUM ORDER

John H. Tomassone d/b/a Custom Built Fence, Inc. has just filed a Notice of Removal ("Notice") to bring this action to this District Court from its place of origin, the Circuit Court of Lake County, Illinois. This Court is contemporaneously issuing its customary initial scheduling order, but one aspect of the Notice and the underlying Complaint filed by CE Design Ltd. ("CE Design") calls for brief comment.

Even though CE Design's counsel not only cites but relies in part on the Federal Telephone Consumer Protection Act, 47 U.S.C. §227 ("Section 227") as a basis for its lawsuit, its counsel has asserted in Complaint ¶8 that "Federal [sic] jurisdiction does not exist because no federal question or claim is asserted." That seemingly anomalous allegation is perhaps understandable because the language of the statute that provides for a private right of action permits such an action to be brought "in an appropriate court of that State" (Section 227(b)(3), emphasis added). But on that score our Court of Appeals has parted

company with a number of other Courts of Appeals around the country by holding that such actions may be brought in either a state court or a federal court (Brill v. Countrywide Home Loans, Inc., 427 F.3d 446, 449-51 (7<sup>th</sup> Cir. 2005)).

That being the case, this Court is of course required to disregard CE Designs' disclaimer and to credit the removability of this action. If our Court of Appeals were hereafter to reconsider the issue and come to a different conclusion, or if the Supreme Court were hereafter to take up the intercircuit conflict and were to resolve the matter in the way that other Courts of Appeals have done, the matter of removability may be revisited.

A handwritten signature in black ink, reading "Milton I. Shadur". The signature is written in a cursive, flowing style.

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Milton I. Shadur  
Senior United States District Judge

Date: September 27, 2007